IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.502 OF 2006

Municipal Corporation of the City of Thane. ...Petitioner.

Vs.

M/s.Unit Arsens & Ors. ...Respondents

....

Ms.Aarti Mahajan i/b. Mr. R.S. Apte for the Petitioner.

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CORAM : DR. D.Y. CHANDRACHUD, J.

April 12, 2006.

P.C.:

The Municipal Corporation of Thane has filed a suit for the recovery of Rs.93,41,160/- as and by way of damages alleged to be sustained by a fire caused to a floating art gallery. In the money suit, there was a prayer for an appointment of a Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure, 1908 for the removal of the floating iron skeleton which remained in the lake. There is no restraint on the Municipal Corporation removing the iron skeleton. Hence, the Learned Trial Judge correctly declined to appoint a Court Commissioner under Order 26 Rule 9. In any event, the power under Order 26 Rule 9 cannot be exercised in circumstances such as the present. It is

however, clarified that the present order shall not be construed as a restraint on the Corporation from seeking recourse to its constitutional or legal remedies. The petition is dismissed.

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